

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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OSCAR ALMARAZ, *et al.*,

Plaintiffs,

vs.

VISION DRYWALL & PAINT, LLC,  
*et al.*,

Defendants.

2:11-CV-01983-PMP-PAL

**ORDER**

Before the Court for consideration is Defendants' fully briefed Motion to Dismiss Plaintiffs' Complaint (Docs. #8 & #10). The Court conducted a hearing regarding Defendants' Motion on February 27, 2012. Having considered the arguments presented, the Court finds that Defendants' Motion should be granted in part and denied in part.

Plaintiffs' Complaint (Doc. #1) alleges six separate claims for relief. Plaintiffs' First and Second Claims state Collective Action Causes of Action Under the Fair Labor Standards Act, 29 U.S.C. §§ 206 & 207, for failure to pay minimum wages and failure to pay overtime wages. Claims Three through Six state Class Action Causes of Action to recover wages, overtime wages, waiting time penalties, and breach of contract pursuant to Nevada state law.

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1 As argued in Defendants' Motion to Dismiss, the federal judges in the District of  
2 Nevada, including the undersigned, have consistently held that the inherent conflict  
3 resulting from a plaintiff's allegations pursuing an opt-in collective action under the Fair  
4 Labor Standards Act, while at the same time pursuing a parallel opt-out Rule 23 class action  
5 claim, warrants dismissal or severance of the state class action claims for relief. See Phelps  
6 v. MC Communication, Inc., et al, No. 2:11-cv-423-PMP-LRL Order (Doc. #35) (D. Nev.  
7 August 1, 2011). The Court will therefore grant Defendants' Motion to Dismiss Plaintiffs'  
8 Third, Fourth, Fifth and Sixth Claims for Relief without prejudice to pursue said Class  
9 Action Claims in State Court.

10 The Court finds further, however, that Plaintiffs have set forth plausible FLSA  
11 claims in their first two Claims for Relief.

12 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss (Docs # 8  
13 & #10) are GRANTED as to Plaintiffs' Third, Fourth, Fifth and Sixth Claims for Relief, but  
14 DENIED as to Plaintiffs' First and Second Claims for Relief under the Fair Labor  
15 Standards Act, 29 U.S.C. §§ 206 & 207.

16 DATED: March 5, 2012.

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20 PHILIP M. PRO  
21 United States District Judge  
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